IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 1193 of 1999
with
CIVIL APPLICATION NO 1140 of 2000
in
SPECIAL CIVIL APPLICATION NO 4575 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE B.J.SHETHNA
and
Hon'ble MR.JUSTICE RAVI R.TRIPATHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

FOOD CORPORATION OF INDIA

Versus

WORKERS WORKING IN FCI EMPLOYEES ASSOCATION

Appearance:

1. LETTERS PATENT APPEAL No. 1193 of 1999
MR NAVIN K PAHWA for Appellant No.
MR TR MISHRA for Respondent No. 1

CORAM : MR.JUSTICE B.J.SHETHNA
and
MR.JUSTICE RAVI R.TRIPATHI

Date of decision: 06/08/2003

ORAL JUDGEMENT

(Per : MR.JUSTICE B.J.SHETHNA)

1. Reference (ITC) No.7/92 raised before the Court of Industrial Tribunal, Ahmedabad, by the respondent Union came to be allowed by the learned Tribunal by its impugned Judgment and Award dated 23.7.1997 whereby the workmen who were posted in CAP complex at Ranip, Viramgam, Tragad and Mahemdabad were ordered to be paid hardship allowance with effect from 1.10.1986. They were also paid cash handling allowance.

2. The aforesaid impugned Judgment and Award passed by the learned Tribunal was challenged by the Appellant - petitioner Food Corporation of India before this Court by way of Special Civil Application No.4575 of 1999. The learned Single Judge of this Court by his Judgment and order dated 22.7.1997 partly allowed the writ petition filed by the appellant - petitioner and quashed and set aside the impugned Judgment and Award passed by the Tribunal awarding hardship allowance to the workers posted in CAP complex at Ranip, Viramgam, Tragad and Mahemdabad with effect from 1.10.1986, however, dismissed the petition of the appellant - petitioner against the Judgment and Award passed by the Tribunal awarding cash handling allowance to the employees. This part of the Judgment and order passed by the learned Single Judge is challenged by the Appellant Corporation in this Letters Patent Appeal.

3. The Appellant - Corporation had filed the writ petition under Article 226 & 227 of the Constitution of India. Though it is labelled as petition under Article 226, strictly speaking, it was a petition under Article 227 of the Constitution of India and from the Judgment of the learned Single Judge also it appears that he had exercised his jurisdiction under Article 227 of the Constitution and not under Article 226 of the Constitution, therefore, Letters Patent Appeal against such order passed by the learned Single Judge would not be maintainable. Even if the Appeal was maintainable then also the Appellant has no case on merit.

4. However, learned Counsel Mrs.Pahwa for the Appellant vehemently submitted that since the matter was covered under the settlement, therefore, neither the Tribunal nor the learned Single Judge of this court could have gone into merits of the settlement and added what was not there in the settlement. She has also submitted that revision can be there only if the provision existed

otherwise not. In support of her argument Mrs.Pahwa has taken us through the demand raised by the Union which is at Page : R of the compilation. The demand was made by the Union on 10.4.1987 regarding the cash handling allowance. As per the demand the Union wanted to double the existing rates for cash handling and payment be made to all the employees who were required to handle cash in the performance of their duty irrespective of their designation. But, as per the Memorandum of Understanding arrived at between the appellant - Corporation and the union, signed on 14.1.1989 which was agreed by the union that employees who were required to handle the cash will be paid special pay with effect from 1.10.1986 at the following rates :

(a) Upto rupees one lakh Rs. 50/- p.m.

(b) Over Rupees one Lakh and Rs. 75/- p.m.
upto rupees five lakhs

(c) Over rupees five lakhs Rs. 85/- p.m.

Assistant Cashier Rs. 40/- p.m.

Category IV employees Rs. 25/- p.m.
assisting the Cashier

Mrs. Pahwa submitted that the demand made by the Union on 10.4.1987 to double the existing rate for cash handling if paid to all the employees, who are required to handle the cash in performance of their duties irrespective of their designation, was not accepted as per the Memorandum of Understanding. Therefore, there was no question of revision of the same. Thus, she submitted that both, the Tribunal as well as learned Single Judge of this Court, committed an error in granting the 2nd demand regarding cash handling allowance to be paid to the employees irrespective of their designation.

5. We are afraid, we can not accept this submission made by Mrs.Pahwa. As provided in Memorandum of Understanding the employees handling the cash were to be given special pay with effect from 1.10.1986. Reading Clause : 25(1) of Memorandum of Understanding, it is clear that such allowance was not attached to any post. It was made clear that whosoever handle such cash will be given special pay from 1.10.1986. In that view of the matter it cannot be said that either the Tribunal or the learned Single Judge committed an error in passing the Award in favour of the workmen regarding cash handling allowance.

6. When the Tribunal in exercise of its jurisdiction passed an Award in favour of the workmen, after appreciating the evidence on record of the case, then it would not be open to this Court to interfere with such findings of fact recorded by the Tribunal in its jurisdiction under Article 227 of the Constitution. The learned Single Judge of this Court also dismissed the writ petition after considering the material placed on record and concurred with the findings recorded by the Tribunal in its Award regarding payment of cash handling allowance to the employees irrespective of their designation. In the case of MOHD.YUNUS v/s. MOHD. MUSTAQIM & ORS., reported in AIR 1984 SC 38 the Hon'ble Supreme Court has observed as under :

"A mere wrong decision without anything more is not enough to attract the jurisdiction of the High Court under Art.227. The supervisory jurisdiction conferred on the High Courts under Art.227 of the Constitution is limited "to seeing that an inferior Court or Tribunal functions within the limits of its authority," and not to correct an error apparent on the face of the record, much less an error of law. In exercising the supervisory power under Art.227, the High Court does not act as an Appellate Court or Tribunal. It will not review or re-weigh the evidence upon which the determination of the inferior Court or tribunal purports to be based or to correct errors of law in the decision."

7. Having carefully gone through the impugned Judgment and Award passed by the learned Tribunal and the Judgment and order passed by the learned Single Judge, dismissing the petition of the appellant - petitioner against grant of cash handling allowance to the workmen, we do not see any reason to interfere with such orders in Letters Patent Appeal.

8. In view of the above discussion, this Appeal fails and is hereby dismissed. However, there shall be no order as to costs.

Civil Application No.1140 of 2000 is dismissed as the main Letters Patent Appeal is dismissed.

(B.J. Shethna, J.)

Date : August 06, 2003

(Ravi R.Tripathi,J.)

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